(3)

No. 90-976

In The

Supreme Court of the United States

October Term, 1990

ANCLOTE MANOR HOSPITAL, INC.; WALTER H. WELLBORN, JR., M.D.; ARTHUR R. LAUTZ; MANUEL VALLES, JR.; ROBERT L. CROMWELL; THOMAS C. FARRINGTON, JR.; THOMAS E. McLEAN; JAMES C. TREZEVANT, JR.; SERGE BONANNI; LORRAINE HIBBS; ALBERT C. JASLOW, M.D.; ROBERT J. VAN DE WETERING, M.D.; WALTER L. COOPER; JAMES D. O'DONNELL,

Petitioners,

v.

LAWRENCE J. LEWIS, M.D.,

Respondent.

On Petition For Writ Of Certiorari To United States Court Of Appeals For The Eleventh Circuit

SECOND SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

ROBERT V. WILLIAMS, ESQUIRE
JORYN JENKINS, ESQUIRE
TAUB & WILLIAMS, P.A.
First Union Center
100 South Ashley Drive
Suite 2100
Post Office Box 3430
Tampa, Florida 33601
(813) 228-8000

Counsel of Record for the Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAWRENCE J. LEWIS, M.D., a contributor to ANCLOTE PSYCHIATRIC CENTER, INC., a Florida Not For Profit Corporation,

Plaintiff,

vs.

Case No. 86-654-Civ-T-13(C)

ANCLOTE MANOR HOSPITAL, INC., etc., et al.,

Defendants.

_____/

ORDER
(Filed July 7, 1987)

This cause comes before the Court upon the defendants' (except Jim Smith, who was Florida's Attorney General at the time this action was filed, hereinafter "Smith") motion for summary judgment. In the motion, the defendants (except Smith) contend that there is no genuine issue of material fact as to the plaintiff's allegations of fraud and that the plaintiff lacks standing to sue. As the Court finds that the plaintiff does not have standing, this case is DISMISSED on jurisdictional grounds without a determination on the merits of the substantive claims asserted in the complaint.

In essence, the complaint alleges that the defendants (except Smith), as directors and attorney for Anclote Psychiatric Center, Inc. ("APC"), illegally converted APC's not-for-profit status to a for-profit corporation and otherwise breached their fiduciary duty and committed fraud

upon APC by selling APC's assets at less than fair market value to Anclote Manor Hospital, Inc. ("AMH"), which was controlled by the defendants, and then reselling the assets for a huge profit to American Medical International, in violation of APC's charter and 18 U.S.C. §1961, *et seq.* ("RICO"), as well as pendent state laws. The complaint states that plaintiff Lawrence J. Lewis "is bringing this derivative action on behalf of [APC], and has standing to do so." (Complaint at 9). Lewis maintains that he is not pursuing this action in his own right but is acting as a representative of APC. He bases his standing upon his charitable contributions to APC and upon his employment as a medical director and director of admissions of APC. (Memorandum in support of complaint at 3). The complaint also contains allegations against Florida's Attorney General (Smith) and states that Lewis tendered the requisite §100 fee to the Florida Department of Legal Affairs but Smith failed to institute any action against the defendants (except Smith) as required by Florida Statutes section 617.09.

The contributions upon which Lewis bases his standing were made in 1979 and consisted of $100 in cash plus an automobile for which he paid $200. The IRS has not disallowed Lewis' charitable deductions based upon those contributions within the three year statute of limitations set forth in 26 U.S.C. §6501(a), and Lewis has otherwise been unable to calculate any damages that he has personally suffered from the actions of APC's board of directors. In other words, the plaintiff has failed to show a "personal stake" in this action. *See Flast v. Cohen*, 392 U.S. 83, 99 (1968) (focus on person who's standing is

challenged, not whether issue is justiciable).[1] *See also* 18 U.S.C. §1964(c) (limits civil RICO action to person "*injured in his business or property*" (emphasis added)).

Lewis further asserts that his position as a medical director and director of admissions of APC gives him a special interest in this case. However, Lewis was only an employee of APC and has never been on the board of directors or a member of APC, nor has he ever owned stock in APC. *See Fla. Stat.*, §617.50(5) (definition of "member"); *cf. Fla. Stat.* §617.022 (ultra vires – actions by members or directors); *see also Fla. Stat.* §617.011 (corporations for profit shall not issue stock). Both Federal and Florida law require that a plaintiff in a derivative action either be a shareholder or member of the corporation at the time of the transaction of which he complains or that such share or membership thereafter be devolved upon him by operation of law. *See* Fed.R.Civ.P. 23.1; *Fla. Stat.* §607.147. The plaintiff argues that such requirements are inapplicable to him because they are "merely rule[s] of procedure in 'membership' and 'shareholder' derivative actions, which this case is not." (Plaintiff's memorandum in support of complaint at 4 n.3). As noted, however, paragraph nine (9) of the complaint states that Lewis "is bringing this derivative action on behalf of [APC]. . . ."

---

[1] Although the plaintiff relies on *Gray v. St. Matthews Cathedral*, 544 S.W. 2d 488 (Tex. Civ. App. 1976), in support of standing, the plaintiff in *Gray* had a definite "personal stake" in the outcome because he was a former member of the vestry who remained contingently liable for church debts and who was a successor trustee of the trust involved. No such personal stake is involved in the case at bar and *Gray* is otherwise inapposite.

Lewis' inability to bring an action under the rules for derivative actions reaffirms this Court's earlier determination – the plaintiff has no personal stake in the outcome of this action.

The plaintiff argues that to deny him standing "would create the absurd result . . . that there would be no legal mechanism to bring a representative suit on behalf of the Charity [and that] [a]s a matter of public policy, some individual plaintiff must have the right to protect the interests of a charity if those legally charged to do so fall short of their responsibilities." However, a mechanism for such relief has been provided by Florida law. *See Fla. Stat.* §617.09; *see also* 9 Fla. Jur. 2d *Charities* §18 (Attorney General is proper party and private parties generally have no right to maintain suit other than as relators to Attorney General). In addition, given the Attorney General's response to the defendants' (except Smith) motion for summary judgment, the plaintiff's concerns that the interests of the charity will not be protected are unfounded. Therein, the Attorney General asserts that he is still investigating and evaluating the evidence and is authorized under both common-law and statutory law to investigate, and if necessary, litigate the alegations contained in the complaint.

Accordingly, this action is DISMISSED.

DONE AND ORDERED in Chambers at Tampa, Florida, this 7th day of July, 1987.

/s/ George C. Carr
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAWRENCE J. LEWIS, M.D., a contributor to Anclote Psychiatric Center, Inc., a Florida Not For Profit Corporation,

Plaintiff,

v.

ANCLOTE MANOR HOSPITAL, INC., a Florida For Profit Corporation, et al.,

Defendants.

Case No. 86-654-CIV-T-13(C)

ORDER
(Filed April 7, 1989)

86-654

On July 7, 1987, this Court entered summary judgment against the plaintiff finding that he lacked standing to bring this action and dismissed the case. The Court's judgment was subsequently affirmed on appeal. Upon remand, all of the defendants (except defendant Smith) moved for Rule 11 sanctions and to tax costs. The defendants seek an award of attorney's fees and costs incurred in defending this case. On May 28, 1988, the clerk of the court assessed costs totalling $5,816.40 against the plaintiff. The plaintiff then moved to quash the clerk's taxing of these costs.

Rule 11, Fed.R.Civ.P., provides:

> The signature of an attorney or party constitutes a certificate by the signor that the signor has

> read the pleading, motion, or other paper; that to the best of the signor's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred . . . including a reasonable attorney's fee.

The standard for testing an attorney's or party's conduct under Rule 11 is "reasonableness under the circumstances," an objective standard. *Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1987). The defendants argue that the plaintiff's suit was meritless and vexatious and therefore Rule 11 sanctions are appropriate. Upon review of the file, the Court finds that the conduct of the plaintiff and his counsel was not of such an egregious nature that Rule 11 sanctions are warranted. Additionally, the Court finds that the defendants are not entitled to an award of costs in this case. It is well within the Court's discretion to disallow or reduce the costs allowed to a prevailing party, especially when the parties are unevenly matched in size and resources and where the losing party conducted the litigation in good faith. *See American Key Corp. v. Cumberland Associates*, 102 F.R.D. 496, 498 (N.D.Ga. 1984). In the case at bar, the parties are unevenly matched in size and resources and the plaintiff did not act in bad

faith in pursuing his claims. Also, many of the costs for which the defendants seek reimbursement were not necessary for preparing or presenting the standing issue to the Court. Under the circumstances of this case, the Court finds that the parties should bear there own costs.

Accordingly, the defendants' motions for Rule 11 sanctions and to tax costs are DENIED, and the plaintiff's motion to quash the clerk's taxing of costs is GRANTED.[1]

DONE AND ORDERED in Chambers in Tampa, Florida this 7th day of April, 1989.

/s/ William J. Castagna
UNITED STATES
DISTRICT JUDGE

---

[1] The defendants also filed a motion to consolidate their motions for Rule 11 sanctions and to tax costs. Given the Court's disposition of these motions, the motion to consolidate is moot and therefore DENIED.

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 89-3382
Non-Argument Calendar

D.C. Docket No. 86-00654-Civ-T-13C

LAWRENCE J. LEWIS, M.D., a contributor to Anclote Psychiatric Center, Inc., a Florida Not For Profit Corporation,

Plaintiff-Appellee,

versus

ANCLOTE MANOR HOSPITAL, INC., a Florida For Profit Corporation, WALTER H. WELLBORN, JR., M.D., ARTHUR R. LAUTZ; MANUEL VALLES, JR., ROBERT L. CROMWELL, THOMAS C. FARRINGTON, JR., THOMAS E. MCLEAN, JAMES C. TREZEVANT, JR., SERGE BONANNI, LORRAINE HIBBS, ALBERT C. JASLOW, M.D., ROBERT J. VAN de WETERING, M.D., WALTER L. COOPER and JAMES P. O'DONNELL,

Defendants-Appellants,

ROBERT A. BUTTERWORTH, Attorney General of the State of Florida,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida.

(February 8, 1990)

Before FAY, KRAVITCH and COX, Circuit Judges.

PER CURIAM:

This is an appeal from the district court's denial of defendant-appellants' motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure and of their motion to tax costs against the plaintiff-appellee.

The district court held that the conduct of the plaintiff and his counsel in the underlying litigation was "not of such an egregious nature" as to warrant Rule 11 sanctions. The court further granted the plaintiff's motion to quash the clerk's taxing of costs,[1] finding that such was not warranted where the parties were unevenly matched in size and resources and the plaintiff did not act in bad faith in pursuing his claims.

Defendants assert that the district court abused its discretion by relying on an incorrect standard when deciding the Rule 11 motion. They further claim that a *de novo* review of the legal arguments presented by the plaintiff in the underlying litigation will demonstrate that the suit was without basis in law. Finally, they state that the court abused its discretion in denying their motion to tax costs. Because we find that the cursory nature of the district court's order makes it impossible for this court to engage in meaningful appellate review, we vacate and remand.

---

[1] The clerk of the court had assessed costs totaling $5,816.40 against the plaintiff.

The litigation on which the defendants' motion for sanctions and costs is based involved a suit by Lawrence J. Lewis, M.D., former Medical Director and Director of Admissions of Anclote Manor Hospital ("AMH") against AMH, the directors of the Anclote Psychiatric Center, Inc. ("APC"), the directors' attorney, and the former Florida Attorney General, Jim Smith. Lewis alleged that the defendants, except Smith, as directors and attorney for APC, illegally converted APC's not-for-profit status to a for-profit corporation. Lewis claims that in the process, the defendants breached their fiduciary duty and committed fraud upon APC by selling its assets at less than fair market value to AMH, which was controlled by the defendants, and then reselling the assets for a huge profit to American Medical International, in violation of APC's charter and in violation of RICO, 18 U.S.C. § 1961 et seq. Lewis based his standing to bring a derivative action on behalf of APC on the grounds that he had made charitable contributions to APC and had been an APC employee.

Upon defendants' motion for summary judgment, the district court dismissed the case on jurisdictional grounds, finding that Lewis lacked standing to bring a derivative action. The court stated that "[b]oth Federal and Florida law require that a plaintiff in a derivative action either be a shareholder or a member of the corporation at the time of the transaction of which he complains or that such share or membership thereafter be devolved upon him by operation of law." *Lawrence J. Lewis, M.D. v. Anclote Manor Hospital, Inc., etc., et al.*, No. 86-654-Civ-T-13(C), *aff'd* 837 F.2d 1093 (11th Cir. 1988) (per curiam), *cert. denied*, 109 S.Ct. 79 (1988). The court

explicitly stated that its order did not constitute a determination on the merits of the substantive claims asserted in the complaint.

I.

Rule 11, Fed.R.Civ.P. provides in part that:

> The signature of an attorney or party constitutes a certificate by the signor that the signor has read the pleading, motion, or other paper; that to the best of the signor's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .

The language of the rule makes clear that if the court determines that papers were filed in violation of the rule, then the court *shall* impose an appropriate sanction. The Advisory Committee Note to Rule 11 states that the Rule's current language is "intended to reduce the reluctance of courts to impose sanctions." *See also, Collins v. Walden*, 834 F.2d 961, 964 (11th Cir. 1987).

Following the lead of the D.C. Circuit in *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174-75 (D.C.Cir. 1985), the Eleventh Circuit, in *Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1987), adopted a dual standard of review

for evaluating district court orders relating to Rule 11 sanctions.[2] In *Thomas v. Evans*, 880 F.2d 1235, 1239 (11th Cir. 1989), the court set out the *Donaldson* standard of review as follows:

> An attorney or a party may be sanctioned under Rule 11 for filing a pleading that: (1) has no reasonable legal basis; (2) has no factual basis; or (3) is filed for an improper purpose. . . . Regarding the scope of appellate review of a Rule 11 sanction, factual determinations and the decision to impose sanctions are within the discretion of the district court and are subject to review only for abuse of discretion. *Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1987). Determining whether a pleading or motion is legally sufficient, on the other hand, involves a question of law subject to de novo review. *Id.*

(citation omitted); *see also, DeSisto College, Inc. v. Line*, 888 F.2d 755 (11th Cir. 1989). In *Donaldson*, the Eleventh Circuit stated that the "reasonableness" of an attorney's behavior is an objective standard of "reasonableness under the circumstances." 819 F.2d at 1556. *See also Corp of the Presiding Bishop v. Assoc. Contractors*, 877 F.2d 938, 941 (11th Cir. 1989). The Advisory Committee Note to Rule 11, on which the *Donaldson* court relied, makes clear that

---

[2] In *Donaldson*, the court stated:

> Whether (1) factual or (2) dilatory or bad faith reasons exist to impose Rule 11 sanctions is for the district court to decide subject to review for abuse of discretion; on the other hand, a decision whether a pleading or motion is legally sufficient involves a question of law subject to *de novo* review by this court.

819 F.2d at 1556.

"reasonableness under the circumstances" applies to counsel's pre-filing inquiry into the facts as well as his inquiry into the law on which he intends to base his argument.

In *Norton Tire Co., Inc. v. Tire Kingdom Co., Inc.*, we noted the *Donaldson* standard "evinces a clear policy to leave resolution of Rule 11 matters primarily in the hands of the trial judge, who by virtue of his close contact with the parties is best able to determine the propriety of sanctions." 858 F.2d 1533, 1536 (11th Cir. 1988). Thus, a district court judge's overall decision on whether to impose sanctions is reviewable under an abuse of discretion standard. *See, e.g., Palmer v. BRG of Georgia, Inc.*, 874 F.2d 1417, 1422 (11th Cir. 1989) (employing abuse of discretion standard in upholding court's denial of appellants' motion for Rule 11 sanctions). *De novo* review only comes into play when this court is called upon to review the district court's findings as to the legal sufficiency of a pleading or motion.

II.

A. Factual Sufficiency

In their brief before this court, defendants recount, at length, statements of fact in the various papers filed by plaintiff's lawyer that it contends are false as well as legal arguments proffered by plaintiff that it considers to be without merit.[3] Rule 11, however, does not require

---

[3] Defendants point to allegations and arguments in plaintiff's Complaint, Memorandum of Law in Support of Sufficiency of Complaint, Motion to Strike Defendants' Claims for

(Continued on following page)

imposition of sanctions merely because one party alleges as "facts" statements that the other party alleges (and may ultimately prove) are without basis. If this were so, imposition of sanctions on losing parties would be commonplace.

Instead, sanctions are to be imposed if the alleged facts and legal arguments are without merit *and* such facts and arguments were contrary to "the signer's knowledge, information, and belief formed after reasonable inquiry." Rule 11, Fed.R.Civ.P. *See Thomas*, 880 F.2d at 1240. (Rule 11 sanctions not appropriate merely because the pleader's view of the law is incorrect).

The district court's findings as to the factual basis of the complaint are reviewable for abuse of discretion. In the instant case, however, we find it impossible to exercise our review function because the district court has made no findings as to whether the complaint was grounded in fact. Further, while the district court recognized that such findings are to be made using an objective standard of "reasonableness under the circumstances," it went on to note that plaintiff and counsel's conduct was not "egregious." This suggests that the district court, despite its awareness of the correct standard, may have improperly relied on a subjective determination of counsel's conduct in refusing to award sanctions.

(Continued from previous page)

Attorney's Fees, and Motion to Add Party Plaintiff and Motion for Disqualification.

Defendants request this court to reverse the district court and order it to impose sanctions forthwith. This we decline to do. Because the district court has made no factual findings and because it is unclear whether the judge relied on the proper standard in reviewing the reasonableness of counsel's conduct, we feel that the prudent course of action is to remand this case to the district court. This will allow that court to clarify its reasons for refusing to award sanctions on the basis of factual insufficiency.

B. Legal Sufficiency

The district court did not make a finding as to the legal sufficiency of the arguments presented in the plaintiff's pleadings and motions. Defendants allege that had plaintiff's counsel conducted any inquiry into the law, he would have realized, among other things, that his client, being neither a shareholder or member of APC, had no standing to sue derivatively, and further would have realized that in order to maintain a suit under RICO, standing to sue derivatively is not enough; instead plaintiff must show that he was injured in his business or property.

The legal sufficiency of the arguments presented by the plaintiff is subject to *de novo* review. We find, however, that *de novo* review of the legal arguments necessarily includes factual findings as to the events that form the basis of the underlying litigation. Thus, we are loath to engage in review of the legal arguments before the district court has had an opportunity to make findings of

fact on the events that allegedly gave rise to plaintiff's legal claims.

Further, in *United States v. Milam*, 855 F.2d 739 (11th Cir. 1988), the Eleventh Circuit stated that "when parties attempt to pursue civil litigation with legal theories apparently foreclosed by statute and precedent, they must do so with candor toward the court and with a sense of whether their argument is appropriate and reasonable." *Id.* at 745. While plaintiff's reliance on his status as an employee or contributor to maintain standing is certainly a novel approach to a derivative action, the district court has made no finding as to whether this position was intended to deceive or mislead the court. We note that the mere fact that the district court refused to accept those theories and dismissed for lack of standing does not mean that sanctions are in order. *See O'Neal v. DeKalb County, Ga.*, 850 F.2d 653, 658 (11th Cir. 1988) ("Simply because the district court granted the defendants' motion for summary judgment does not mean that the plaintiffs' action was frivolous.").

We reserve ruling on the defendants' appeal of the district court's refusal to tax costs until we revisit this case after remand. Accordingly, we remand for the limited purpose of allowing the district court, within 60 days, to clarify its reasons for refusing to impose Rule 11 sanctions against the plaintiff.

VACATED AND REMANDED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAWRENCE J. LEWIS, M.D., a contributor to ANCLOTE PSYCHIATRIC CENTER, INC., a Florida not for profit corporation,

Plaintiff,

v.

Case No. 86-654-CIV-T-13C

ANCLOTE MANOR HOSPITAL, INC., etc., et al.,

Defendants.

NOTICE OF DELAYED DOCKETING
AND ORDER OF RECUSAL

On February 8, 1990, the Court of Appeals for the Eleventh Circuit issued its order remanding this case for the entry of findings of fact. That order and the case file were then forwarded to the Clerk of this Court. The order and file were misplaced in the Clerk's office. Upon discovery of the misplaced items, they were filed and docketed. As a result, this Court received the Court of Appeals' order of remand on this date, i.e. the date on which response was due.

Upon review of the matter, it further appears that the order of April 7, 1989 (D-138) was signed by this Court inadvertently; that there existed at that time and there continues to exist valid reason for this Court to recuse itself from any participation in this case. It is therefore ORDERED:

1. That the order of this Court of April 7, 1989 is vacated and withdrawn.

2. That I do recuse myself from participation in this cause.

3. That this cause be reassigned by the Clerk pursuant to the standing order on random assignment of cases.

DONE AND ORDERED at Tampa, Florida this 9th day of April, 1990.

/s/ William J. Castagna
WILLIAM J. CASTAGNA
UNITED STATES
DISTRICT JUDGE

Copies to
Counsel of Record
Clerk, U.S.C.A.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAWRENCE J. LEWIS, M.D.,

Plaintiff,

v.

ANCLOTE MANOR HOSPITAL, et al.,

Defendants.

Case. No. 86-654-Civ-T-13(C)

ORDER

The above-styled case is before the Court on limited remand from the United States Court of Appeals for the Eleventh Circuit. In an Order dated April 7, 1989, the Hon. William J. Castagna denied the defendants' motions for Rule 11 sanctions and to tax costs. The case subsequently was remanded to the District Court for the purpose of clarifying its reasons for refusing to impose Rule 11 sanctions against the plaintiff. Following remand, the Hon. William J. Castagna entered an Order of recusal and vacated the Order denying sanctions and costs. The case is now before the undersigned, who has assumed responsibility for all further proceedings. In light of the time period specified for resolution of this matter by the Eleventh Circuit[1] and given the fact that the undersigned is engaged in a protracted criminal trial, this case is referred to the United States Magistrate for her report and recommendation as to appropriate disposition of the matter.

---

[1] The Eleventh Circuit's Order of April 10, 1990 directs the District Court to resolve this matter on or before May 9, 1990.

The Magistrate is directed to give fresh consideration to the issues to determine whether sanctions and/or costs are appropriate and, if so, in what amount.

DONE AND ORDERED in Chambers, in Tampa, Florida this 23rd day of April, 1990.

/s/ W. Darrell Hodges
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 89-3382
Non-Argument Calendar

D.C. Docket No. 86-00654-Civ-T-13C

LAWRENCE J. LEWIS, M.D., a contributor to Anclote Psychiatric Center, Inc., a Florida Not For Profit Corporation,

Plaintiff-Appellee,

versus

ANCLOTE MANOR HOSPITAL, INC., a Florida For Profit Corporation, WALTER H. WELLBORN, JR., M.D., ARTHUR R. LAUTZ, MANUEL VALLES, JR., ROBERT L. CROMWELL, THOMAS C. FARRINGTON, JR., THOMAS E. MCLEAN, JAMES C. TREZEVANT, JR., SERGE BONANNI, LORRAINE HIBBS, ALBERT C. JASLOW, M.D., ROBERT J. VAN de WETERING, M.D., WALTER L. COOPER, JAMES P. O'DONNELL,

Defendants-Appellants,

ROBERT A BUTTERWORTH, Attorney General of the State of Florida,

Defendant.

Appeal from the United States District Court for the Middle District of Florida

---

Before FAY, KRAVITCH and COX, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT defendants-appellants pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Entered: July 30, 1990
For the Court: Miguel J. Cortez, Clerk

By: /s/ David Maland
Deputy Clerk

ISSUED AS MANDATE: AUG 23 1990